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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-1464

SAMMY LEON WILLIS,
Petitioner,

v.

COMMONWEALTH OF VIRGINIA,
Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

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May 23, 1980

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QUESTION PRESENTED

Whether the evidence introduced at the trial of the matter was obtained by an illegal search and seizure without a warrant in violation of the Fourth Amendment to the Constitution of the United States.

STATEMENT OF THE CASE

Sometime in October, 1977, a police informant indicated to an officer of the Norfolk,

Virginia Police Department that he had a contact in Texas who could supply him with marihuana and who had brought marihuana into the Norfolk area on prior occasions. On October 20, 1977, the informant made a call from police headquarters to a number in Texas. Based on the informant's version of the phone conversation, it was an invitation on the part of the informant to the Defendant for the Defendant to bring marihuana to Norfolk for sale.

On November 13, 1977, at approximately 6:30 p.m., the police officer was contacted by the informant. The officer, along with five other officers, met with the informant at a designated place in Norfolk. At that time the informant stated that he had received a phone call from the Petitioner to the effect that he was staying in Room 117 at the Airport Motor Inn in Norfolk, and that he had 100 pounds of marihuana and wanted to deal. Based on the representation that the informant did not know where

the marihuana was, the police decided to send the informant to the Motor Inn and observe.

The informant arrived at the motel room at approximately 8:05 p.m. The police had positioned two officers in an unmarked car approximately four to five doors down from the motel room. Two additional officers were across the street. All officers were able to see the motel room and the camper of the Defendant. One additional officer was stationed down the street to make contact with the informant after he left the motel room.

The informant remained in the motel room for about 25 minutes. During that time, there were two separate trips made by unidentified males from the room to the camper. One returned to the room carrying a plastic bag.

The police testified that the plan was for the informant to meet the police with

the marihuana that had been "fronted" to him, allow some time to pass, give the informant money to return to the motel room and get some more marihuana and then secure a search warrant. The police further testified that their plans had to change when the camper unexpectedly left the motel parking lot at the same time as the informant.

The police followed the camper to a restaurant where the occupants obtained food from the drive-up window. The camper then proceeded to drive away and the police then decided to stop the vehicle.

The camper was stopped after a short distance at approximately 9:45 p.m. The occupants were searched and placed in separate police cars.

The evidence was unclear as to whether the camper was seized and then searched or searched and then seized. In any event, at least three officers throughly searched the interior of the camper portion of the

vehicle. The officer testified that they searched for "approximately ten minutes" without finding anything although the officer "could smell from my past experience what I believed to be marihuana".

Finally the officer dismantled a dresser built in a frame underneath a bed in front of the camper compartment. After dismantling the dresser, the officer shook the dresser frame itself, found it loose, and then pulled it out from the frame that held up the bed. Then, looking into the cavity created by dismantling the dresser and its frame, the officer observed a plywood wall. The seams of the wall were covered with what the officer termed "plumber's tape". Upon opening this door there was a compartment next to the back of the cab where a number of closed, opaque plastic bags were found. Upon opening the bags, the officers found the substance believed by them to be marihuana.

A motion to suppress the seized marihuana was made at trial and denied. A subsequent appeal to the Supreme Court of Virginia based in part on the denial of the motion to suppress was denied.

REASONS FOR DENYING THE PETITION

The warrantless search of a motor vehicle is not an unreasonable search, within the constitutional meaning, if made upon probable cause that contraband is contained therein and exigent circumstances are present. The definition of probable cause was restated by the Supreme Court of Virginia in Shaum v. Commonwealth, 215 Va. 498 at p. 500,

> Probable cause, as the very name implies, deals with probabilities. These are not technical; they are the factual and practical considerations in everyday life on which reasonable and prudent men, not legal technicians, act. Probable cause exists when the facts and circumstances within the arresting officer's knowledge and of which he has reasonable trustworthy information are sufficient

> in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed.

In the instant case a reliable informant contacted the defendant for the purpose of buying a large quantity of marihuana. The call was made from police headquarters in Norfolk.

Later, the informant notified the police that the defendant was staying at a motel room in Norfolk, and that he had a large quanity of marihuana to sell.

The Police sent the informant to the motel while they observed from a short distance away. The police saw two men walk from the room to a camper parked in the lot and return to the room carrying a large plastic bag. The police planned to have the informant leave the room under the pretense of obtaining money for the buy while the police secured a warrant to search the room. Their plans went awry when the

camper unexpectedly left the motel parking lot. The police followed, and after observing the camper stop at the drive-up window of a fast food restaurant, then proceed to drive away, the police decided to stop the camper. This series of events established sufficient facts to give the police probable cause to stop the camper.

In Draper v. United States, 358 U.S. 307 (1959), the Court held that information provided by an informant to a narcotics agent, although "hearsay", was sufficient to constitute probable cause. The informantion in that case involved a mere description of the defendant's physical attributes and clothing. The instant case had the informant and the police working together at every stage from the initial contact to the motel meeting. Similarly, in Brinegar v. United States, 338 U.S. 160 (1949), the Court held that probable cause existed when the officer's knowledge of illegal

activity was derived from his personal observation and not based entirely or largely on surmise or hearsay. Again, the presence of the police at each stage of the transaction reinforced their belief that a crime would be, and was being committed.

Petitioner asserts that, given the existence of probable cause, respondent failed to carry its burden of proving exigent circumstances. However, this Court has clearly established that, given probable cause, an automobile, because of its mobile nature, may be searched without a warrant. Chambers v. Maroney, 399 U.S. 42 (1970); Carroll v. United States, 267 U.S. 132 (1924).

The petitioner relies upon Coolidge v. New Hampshire, 403 U.S. 443 (1971), where the Court held exigent circumstances did not exist where the car was seized in the driveway of the defendant incidental to his arrest in his home. Respondent respectfully submits

that petitioner misapplies the law in Coolidge, supra, to the facts in the instant case. In Coolidge, the defendant was arrested in the house while police guarded the front and back door, thus rendering it impossible for the defendant to reach his car. After the defendant's arrest, the police maintained an around-the-clock guard of the defendant's premises. Moreover, the police had known for some time of the probable role of the car in the crime, and the defendant knew he was a suspect and was cooperative throughout the investigation. Given the fact that the defendant had ample opportunity to destroy the evidence together with the aforementioned facts, the Court held that exigent circumstances were not present. In the instant case, peitioner was "stopped on the highways", Chambers v. Maroney, supra, at 51, thus forcing the police to act quickly and decisively.

The petitioner is further aggrieved by the scope of the search. The holding in Wescott v. Commonwealth, 216 Va. 123 (1975), relying on Almeda-Sanchez v. United States, 413 U.S. 266 (1973), and Chambers v. Maroney, 399 U.S. 42, reh. denied 400 U.S. 856 (1970), counters that objection. In that case the officer had probable cause to believe that narcotics would be transported in a car driven by the defendant. The Wescott Court held that, given such probable cause, the officer's right to stop and conduct a warrantless search of a moving vehicle extends to the entire car.

This Court has held that in the course of a lawful warrantless search of a motor vehicle, certain objects found therein enjoy a more stringent standard than the vehicle itself. In Arkansas v. Sanders, ____ U.S. ____, 61 L. Ed. 2d 235, 99 S. Ct. ____ (1979), the Court held that a warrant should be obtained to search a suitcase found during

the course of a warrantless search of a taxicab, reasoning that having seized the suitcase from the automobile it no longer possessed the mobile nature of the place from which it was taken. Like reasoning was applied by the Court in United States v. Chadwick, 433 U.S. 1 (1977), where the object in question was a footlocker. Both cases are clearly distinguishable from the case at bar. The instant case involves the moving of a dresser in order to remove paneling of the camper, at which time the marihuana was discovered. Throughout the search the mobile nature of the vehicle necessarily applied to the hidden compartment as part of the structure of the vehicle. These facts closely resemble the facts in Chambers, supra, a search of a concealed compartment under the dashboard, and Carroll, supra, a search behind the upholstering of the seats.

Finally, the petitioner seeks to have this Court delineate special rules for modern day

recreational vehicles, which are characterized as "homes on wheels". The facts in this case clearly reveal the endless ingenuity of the modern day marihuana merchant and strongly commends to this Court the wisdom of the Carroll doctrine and its progeny.

CONCLUSION

Based on the authorities cited, respondent respectfully submits that petitioner's Writ for Certiorari be denied.

Respectfully submitted,

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May 23, 1980

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of May, 1980, four copies of the Response to Petition for Writ of Certiorari was mailed, postage prepaid, to Thomas W. Moss, Jr., Counsel for the Petitioner, 1505 First Virginia Bank Tower, Norfolk, Virginia, 23510. I further certify that all parties required to be served have been served.

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